



THE DANISH
INSTITUTE FOR
HUMAN RIGHTS

THE AAAQ
FRAMEWORK AND
THE RIGHT TO
WATER

INTERNATIONAL INDICATORS FOR
AVAILABILITY, ACCESSIBILITY,
ACCEPTABILITY AND QUALITY

AN ISSUE PAPER OF THE AAAQ TOOLBOX

THE AAAQ FRAMEWORK AND THE RIGHT TO WATER

International indicators for availability, accessibility,
acceptability and quality

An issue paper of the AAAQ toolbox

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ABBREVIATIONS

AAAQ	Availability, Accessibility, Acceptability & Quality
CESCR	The Committee on Economic, Social and Cultural Rights
CPR	Civil and Political Rights
ESC rights	Economic, Social and Cultural Rights
GC	General Comment
HRBA	Human Rights Based Approach
ICCPR	The International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights

INTRODUCTION

Human rights concern has gained traction in the development agenda over the last two decades. The emergence of the Human Rights Based Approach to development (HRBA) has not only changed the way many development issues are conceptualised through important human rights principles such as accountability, participation and equality and non-discrimination,¹ but has also provided an entry point for working with the Economic, Social and Cultural Human Rights (ESC rights). This allows ESC rights a prominent role in the socio-economic development of countries around the world. Furthermore, HRBA underlines the complementary nature of the two major conventions in the international human rights framework (the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR)). The realization of Civil and Political Rights (CPR) is now considered both a prerequisite of, and dependent on, the realization of ESC rights.

Meanwhile, the challenge remains of “translating the legal principles and normative values into a model for development with a clarified methodology, analytical concepts and policy options”.² In order to engage in dialogue about ESC rights, all the involved actors need to know and understand what an adequate standard of living means and how this can be achieved. Therefore it is necessary to carry out a comprehensive analysis of the specific content of each of the rights spelled out in the ICESCR and national laws and policies. If dialogue is based on such an analysis, it is possible for rights holders and duty bearers to discuss and agree on specific entitlements of rights holders and obligations of duty bearers.

Identification of minimum standards for service delivery can contribute to increased transparency and accountability and provide a framework for regular monitoring of the realization of ESC rights. If the public knows exactly what they can expect from the state, it is possible to measure if the state meets its obligations. Service standards are also essential tools for ensuring public participation because they allow for public monitoring of service levels according to the agreed standards and they provide a framework for engaging in local and national dialogue on service provision based on facts rather than perceptions.

Some progress has been made to render the content of ESC rights in more concrete terms. Thus, since its establishment in 1985, the Committee on Economic, Social and Cultural Rights (CESCR) has issued a number of General Comments on rights under the ICESCR providing some guidance on the normative content of the rights and the core obligations of states. However, the clarification in the General Comments still leaves much room for interpretation in terms of the specific scope and content of ESC rights.

PURPOSE

The main purpose of this paper is to explore a possible generic methodology for the operationalisation of ESC rights, exemplified through one of the rights under Article 11 of ICESCR: The right to water. The key aims of this methodology is:

- To identify the core normative dimensions of the right in terms of the criteria of Availability, Accessibility, Acceptability and Quality (AAAQ)³.
- To develop a framework on the basis of the AAAQ criteria that consists of specific standards, generic indicators and generic benchmarks.

The methodology is based on in-depth review of authoritative as well as secondary sources with a special focus on General Comment 15 on the right to water, which was issued by CESCR 2002.⁴

As set out in General Comment 15, the right to water covers water for *personal and domestic uses*, including drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene drinking water and water for household. Thus, water for industry, farming (including subsistence farming) and other uses is not included in the human right to water (but are part of other covenant rights).⁵ However simplified, the supply of water for these uses is still dependent on a range of external factors, such as the technical solutions applied and societal structures, which in turn impacts on the enjoyment of the right and on other rights as well. For example, consider how technical solutions directly impact the quality of drinking water or how land rights can be entangled with extraction rights to natural resources. However, the AAAQ framework only deals with these considerations to the extent that they are directly impacting the enjoyment of the right. Thus, working with the right to water in practice on the basis of AAAQ should focus on contextualising the framework in a way that considers these implications.

This paper is part of a larger project that seeks to operationalise a number of ESC rights, namely the rights to water, sanitation, food, housing, health, and education by developing their respective AAAQ frameworks. Furthermore, methodologies are being developed that aim at the contextualisation of

standards and indicators for different actors in national and local contexts. In the fourth chapter, however, we are only concerned with defining the international human rights standard for the right to water within the AAAQ framework, and the development of generic indicators and benchmarks at the international level.

CONTENTS OF THE PAPER

The paper includes three chapters.

Chapter 1 outlines the central concepts and principles that are common to the AAAQ-project as a whole. First, the international human rights framework will be presented along with an introduction to the structure of treaties and treaty bodies. The human rights framework is crucial to the legitimacy of the methodology applied in developing the AAAQ framework, as well as to any discussion of the justiciability of ESC rights. Secondly, concepts and principles central to the approach are presented, along with an introduction to the AAAQ framework itself.

Chapter 2 outlines the methodology developed for the design of AAAQ frameworks. This methodology can be considered exemplary, and will be applied to all the rights in the AAAQ-project.

Chapter 3 develops an AAAQ framework for the right to water by defining the international human rights principles and standards for the right, and identifying generic indicators and benchmarks accordingly.

A significant level of interpretation is required to develop an AAAQ framework for the right to water. It should be stressed that DIHR presents only one among many equally valid interpretations. To support participation in the development of AAAQ indicators, DIHR is making a dedicated effort to catalogue the sources and promote access to these for anyone interested in learning more about the basis of the AAAQ Framework and developing supplementary or alternative interpretations.

CHAPTER 1

1. CORE CONCEPTS & PRINCIPLES

This chapter outlines the concepts common to the AAAQ-project as a whole. First, ESC rights as part of the international human rights framework are outlined and the concrete ESC rights mechanisms are described. Secondly, the different types of obligations imposed on ratifying states are explained, along with the related concept of progressive realization. Thirdly, the HRBA is described and its relation to ESC rights discussed. Furthermore, the related concept of universality is outlined. Finally, the concept of adequacy and the AAAQ approach is explained. All concepts are approached from the ESC rights perspective with the AAAQ-project in mind, and may thus leave aside some otherwise important and interesting perspectives and concepts.

1.1 ESC RIGHTS IN THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK

The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant of Economic, Social and Cultural Rights (ICESCR). Additionally, a range of conventions specifies special rights, e.g., the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT), and rights relating to non-discrimination, e.g., the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

In short, the rights provided in part III of the ICESCR include the rights to work and fair working conditions, to form and join trade unions, to social security, to protection of the family and motherhood, to an adequate standard of living (including the rights to adequate food, clothing and housing), to the highest attainable standard of health, to receive an education, to compulsory and free primary education, and to take part in cultural life.⁶ Even though the right to water and sanitation is not explicitly mentioned in the ICESCR, in 2010, the General Assembly recognised it as a separate right and as being essential for the realization of all other human rights.⁷

An interesting recent development is the Optional Protocol to the ICESCR (OP-ICESCR), which entered into force on the 5th of May, 2013 and allows for

individual complaints of violations of the ICESCR to be considered by the CESCR. Thus, it adds to the justiciability of ESC rights under the ICESCR and to the legal authority by which the CESCR issues its interpretations thereof. The decisions and recommendations of the CESCR are expected by many to develop a comprehensive jurisprudence based on “case-law” that can be practiced in courts of law.

In order to operationalise the international human rights framework and to provide an overview, the central treaties and mechanisms can be sorted into legally binding and non-legally binding instruments. However, this should be considered illustrative, as non-binding instruments provide authoritative interpretations of human rights and are in some cases actual operationalisation of the rights.

Though the separation may be somewhat artificial, it provides a structure that refers to the legal justiciability when analysing the specific rights. In particular, the argument against hierarchising the legal instruments refers to the notion of the interrelatedness and interdependence of human rights.⁸ However, the hierarchy takes its point of departure in the relative universality extended by each treaty, hence the international treaties first, then the regional ones, then the national legislation.

Human rights instruments
(Legally binding instruments on ratifying states)
The nine core Treaties and their Optional Protocols
<ul style="list-style-type: none">• The International Covenant on Civil and Political Rights (1966)• The International Covenant on Economic, Social and Cultural Rights (1966)• The International Convention on the Elimination of All Forms of Racial Discrimination (1965)• The Convention on the Elimination of All Forms of Discrimination against Women (1979)• The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)• The Convention on the Rights of the Child (1989)• The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)• The Convention on the Rights of Persons with Disabilities (2006)• The International Convention for the Protection of All Persons from Enforced Disappearance (2006)

<p>Regional Treaties and Protocols most relevant to ESC rights⁹</p> <ul style="list-style-type: none"> • American Convention on Human Rights (1969) • Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (1988) • African Charter on Human and Peoples' Rights (1981) • African Charter on the Rights and Welfare of the Child (1990) • Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) • European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) • European Social Charter (1961) • Revised European Social Charter (1996)
<p>National Constitutions and Legislation</p> <p>(Not legally binding instruments, but with moral authority, e.g. declarations, principles, guidelines, standard rules, recommendations, General Comments)</p>
<p>The Treaty Bodies</p> <ul style="list-style-type: none"> • In this context, the Committee on Economic, Social and Cultural Rights <ul style="list-style-type: none"> a) General Comments b) Country reporting to the treaty bodies c) Recommendations and decisions of the Committee under the Optional Protocol d) Guidelines
<p>Human Rights Council</p> <ul style="list-style-type: none"> • Resolutions, declarations, reports • Special Procedures: <ul style="list-style-type: none"> a) Thematic special procedures (development of human rights standards), <ul style="list-style-type: none"> i) In this context, the Special Rapporteurs or Independent Experts on ESC rights b) Country specific special procedures
<p>Office of the High Commissioner of Human Rights (OHCHR)</p> <ul style="list-style-type: none"> • Recommendations, guidelines, standards, reports
<p>The General Assembly</p> <ul style="list-style-type: none"> • Declarations, reports

The Universal Declaration of Human Rights (UDHR) is an umbrella for the international human rights framework. It is a Declaration and therefore not legally binding, but together with the two covenants, ICESCR and ICCPR, it forms the International Bill of Human Rights. It is within the two covenants we find the provisions stating human rights principles and standards. They are legally binding on ratifying states and their optional protocols allow for the respective treaty bodies to consider individual complaints of violations, and thereby providing jurisprudence on the rights.

Furthermore, there are the seven conventions and their optional protocols. While they address specific populations or issues, they also hold provisions relating to ESC rights in their given context. Thus, they provide information on

the specific rights in relation to the issue or population they address. Even though they are not used extensively here, they may be of importance to specific projects.

The Bill of Human Rights together with the seven conventions form the core international instruments of the UN. The provisions found in these treaties form the essence of the normative human rights framework.

The treaty bodies, in this case the CESCR, oversee the implementation of the covenants and conventions. These bodies have also developed the normative basis for the standards found in the treaties, as well as the obligations of the duty bearers that follows those standards. Technically speaking, these interpretations are not legally binding, but due to the status and function of the treaty bodies, they carry a strong moral and persuasive authority.¹⁰

The special procedures of the Human Rights Council have also contributed to the normative understanding of the international human rights standards. In this context, the reports of the special procedures thematic mandates in relation to ESC rights have provided the foundations for the General Comments. A clear example of this was when the Special Rapporteur on education developed the "Four-A"s analytical framework, which a year later was adopted in the Committee's General Comment No. 13 on the right to education as the normative criteria for the fulfilment of the right to education. As such, special procedures in themselves do not provide jurisprudence, but the above example underlines their important function.

1.2 ESC RIGHTS MECHANISMS

1.2.1 THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

As already mentioned, the ICESCR is one of three treaties and declarations that constitute the International Bill of Human Rights. The Covenant was opened for signatures in 1966 and entered into force in 1976. As of February 2014, it has been ratified, acceded to or succeeded by 161 state parties, with 70 signatures not yet ratified. As the name suggests, ICESCR enshrines as human rights a number of ESC rights, among which are the right to an adequate standard of living, including food, clothing and housing (Art. 11); the right to the highest attainable standard of health (Art. 12); and the right to receive an education (Arts. 13 and 14), – the rights that are of primary concern in the AAAQ-project.

1.2.2 THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (CESCR)

The Committee is charged with monitoring the implementation of ICESCR, and is thus the body the ratifying countries report to regarding ESC rights. Since its formation in 1985, it has also issued a number of General Comments providing the Committee's interpretation of the provisions of the Covenant. It is within these General Comments that the criteria for fulfilment of these rights are found. Furthermore, the Committee adopts statements from time to time to clarify its position on central issues in light of major contemporary international developments, thus providing another source of authoritative interpretation.

1.2.3 HUMAN RIGHTS COUNCIL

The Human Rights Council (HRC) is the principal intergovernmental body of the UN responsible for human rights under the General Assembly (GA). Established in 2006, it took over the responsibilities of the former Commission on Human Rights. It reviews the Human Rights situation in individual states through the Universal Periodic Review. The HRC also appoints the special procedures, as described below, and receive their reports.

1.2.4 SPECIAL PROCEDURES

- Special Procedures is the general name for the expert mandates established under the Human Rights Council to address either country-specific situations or thematic issues in all parts of the world. Mandates are typically divided into country mandates (investigate and report on human rights situation in specific countries) and thematic mandates (investigate and report on major phenomena of human rights violations worldwide). The special procedures are either individuals (e.g. Special Rapporteurs (SR) or Independent Experts (IE)) or a Working Group. Given the purpose of the AAAQ-project, our interest is directed towards special procedures that aim to contribute to the development of authoritative norms and standards or provide legal expertise on specific issues for ESC rights.¹¹ In this context, a number of special procedures can be identified as being of particular interest:¹²
 - Special Rapporteur on the human right to safe drinking water and sanitation
 - Special Rapporteur on the right to food
 - Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context
 - Special Rapporteur on the right to education
 - Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health
 - Special Rapporteur on extreme poverty and human rights

1.2.5 OFFICE OF THE HIGH COMMISSIONER OF HUMAN RIGHTS

The OHCHR is mandated by UN General Assembly resolution 48/141 to promote and protect human rights for all, making recommendations and playing an active role in promotion and protection of human rights everywhere. The work of the OHCHR has five pillars: thematic work on specific issues, such as gender or human rights mainstreaming; standard-setting work, contributing to the development of international human rights norms and standards; monitoring work, ensuring norms and standards are applied in practice; implementation, aiming to identify human rights crisis and offering technical assistance; and finally, human rights education, empowering people to claim their rights.¹³

1.3 STATE OBLIGATIONS – RESPECT, PROTECT, FULFIL

The established understanding of state obligations under the ICESCR (and other international human rights treaties) refers to a framework in which the Covenant imposes three types of obligations on the state: to Respect, Protect and Fulfil.¹⁴ The obligation to respect means that the state should not interfere with the enjoyment of the right. The obligation to protect means that the state through legal and judicial measures has to make sure that third parties do not interfere with the enjoyment of the right. The obligation to fulfil means to take steps towards the realization of the rights. It is often disaggregated into obligations to facilitate, promote and provide. The obligation to facilitate means to take positive measures and adopt enabling strategies aimed at creating the conditions necessary for people's ability to fulfil own demands. The obligation to promote means to raise awareness of rights by way of education and the dissemination of information. The obligation to provide includes a direct provision of goods and services to people who, through conditions beyond their control, are not able to fulfil their own needs.¹⁵

When evaluating state compliance with human rights, this typology is of particular importance due to the ability to pinpoint more precisely the possible non-compliance and guide the actions needed. In the context of the AAAQ-project, however, the focus is to develop the standards and indicators by which a given actor is going to measure the implementation on the ground. This is necessary to facilitate the analysis of what types of obligations are in non-compliance and to devise the actions necessary.

1.4 CORE OBLIGATIONS

The distinction between actual legal obligations and recommendations is crucial to developing a methodology to define ESC rights under the ICESCR in specific, operational terms.

In the development of a methodology on operationalising and making tangible the ESC rights under the ICESCR, it is critical to distinguish between actual legal

obligations and recommendations. Generally, when a state has signed the Covenant and ratified it through national legislative procedures, it imposes legal obligations on the state as outlined in the section above. However, the human rights standards to which states are obligated to adhere to are open to interpretation. Also, it is not possible for all countries to implement all rights or all dimensions of a right immediately. The latter point is acknowledged in the ICESCR through the concept of *progressive realization*, which is outlined below. However, through the General Comments, the CESCR has defined certain core obligations and minimum essential levels, which must be implemented immediately. States are obliged to fulfil the minimum essential levels immediately and to progressively fully realize the rights, thus reaching adequate levels.

Even though the General Comments underline the concept of core obligations, the very idea of a core of the right also implies a periphery. This is somewhat controversial because it breaks down and ranks the components of the right, which seems to contradict the fundamental principle that human rights are absolute. While this may support a pragmatic approach to realization, it also delineates the justiciability of rights along the core and thus impedes a more comprehensive understanding of rights.¹⁶ In this context, core obligations are treated as the starting point for progressively realizing the rights fully.

1.5 PROGRESSIVE REALIZATION

A concept central to the implementation of CESCR is that of **progressive realization**. The Covenant states in Article 2.1:

“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”.¹⁷

The Committee points out that “progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time”.¹⁸ Progressive realization is thus a “flexibility device” that acknowledges the difficulties of any state trying to implement these rights. However, the Committee also states that it is the “overall objective, indeed the *raison d’être*, of the Covenant [...] to establish clear obligations for States parties in respect of the full realization of the rights in question”.¹⁹ Indeed, the obligation is “to move as expeditiously and effectively as possible towards that goal”, and “any deliberate retrogressive measures in that regard have to be fully justified”.²⁰ Furthermore, it is the view of the Committee, “that a minimum core obligation to ensure the satisfaction of,

at the very least, minimum essential levels of each of the rights is incumbent upon every State party”.²¹

The High Commissioner for Human Rights notes that the term progressive realization has acquired a specific meaning in international human rights law through the CESCR General Comments. According to the High Commissioner, it implies “an immediate obligation [...] to undertake targeted steps towards full realization” of ESC rights.²² Furthermore, deliberate retrogressive measures are impermissible and states have a duty to immediately satisfy at least the minimum essential levels of ESC rights. States are also required to immediately guarantee non-discrimination with regard to these rights. Though no specific measures are prescribed by human rights standards, they provide guidance to policy-making. Finally, progressive realization implies the need for monitoring mechanisms, which in turn requires both accountability and benchmarks based on internationally agreed development targets.²³

Central to the concept of progressive realization is the “**maximum available resources**” principle. In cases where states fail to meet minimum obligations, they must demonstrate that every effort to meet at least the minimum obligations has been made. Furthermore, even within a context of resource constraints, the state must strive to secure the widest possible enjoyment of ESC rights and devise strategies and programmes to their promotion. In situations of grave resource constraints there should be a focus on the most vulnerable groups of society. Lastly, the use of maximum available resources also refers to the exhaustion of all possibilities for international cooperation and development.²⁴ Even though it may not be appropriate to set fixed amounts in prioritising the realization of ESC rights in national budgets, this perspective ties into such budget tracking methodologies that prove effective in monitoring level of state commitment in actual practice. Furthermore, the maximum available resources principle requires states to actively seek available development assistance if its own resources are not adequate to progress in realization.

As one of the aims of the AAAQ-project is to map out generic standards for the rights, progressive realization is a particularly important aspect. The reason is, as indicated by the statements above, that the likelihood of all states to be able to immediately implement these rights, within their given resource constraints, is minimal. Therefore, this more pragmatic approach has been adopted, an approach which is seen to increase the likelihood of implementation. However, even though the minimum essential levels are to be implemented immediately, it remains unclear **exactly** what is implied by **minimum essential** levels.²⁵ Thus, the need for clarification of the term remains, and it is within the purpose and scope of the AAAQ-project to contribute to this clarification.

1.6 HUMAN RIGHTS BASED APPROACH

The **Human Rights Based Approach** (HRBA) is a relatively new concept within the development field. It has gained traction in recent years, especially since its institutionalisation in UN development cooperation as set out in the 2003 UN "Stamford Common Understanding".²⁶ The HRBA integrates human rights into the plans and processes of development. It seeks to regulate the relationship between state and citizen through the notions of duty-bearer and rights-holder, and their corresponding duties and rights, and sets the abilities to meet obligations and claim rights as the target of development cooperation. Furthermore, it brings with it the human rights principles of participation, equality and non-discrimination, and accountability, both in the process of development and as a fundamental goal of development itself.

The principles of participation are closely interconnected. All people are entitled to participate actively and meaningfully in society to the maximum of their potential. Participation as a process can bring ownership and sustainability to development, but it also implies empowerment.²⁷ Emilie Filmer-Wilson points to a crucial change brought about by the HRBA: "By framing development in human rights terms and subsequently in legal entitlements, what were previously seen as 'needs' are now translated into rightful 'claims'".²⁸ In a simplistic manner, empowerment can thus be seen as the transformation in the view of the individual from being 'the object of' to being 'the subject of' development. In other words, empowerment is a process whereby "people's ability to exercise their influence or claim their rights is improved and through which people are given control over the means necessary to control their own lives".²⁹

Equality and non-discrimination are fundamental principles in the human rights framework. All people are equal by the fact that they are human beings. Thus, all human beings are entitled to their human rights without discrimination of any kind in both law and practice. With regards to development, all should be given equal access to the process of and benefits of development. The state should establish "safeguard mechanisms [and give] special attention [...] to address issues of discrimination, inequality and vulnerability".³⁰

Within the human rights framework, there is an explicit focus on accountability of the duty-bearer towards the rights-holders. The state must be responsible for adherence to human rights standards as well as being answerable to laws and policies. If it fails to do so, the principle of accountability demands the availability of means for rights-holders to seek and obtain redress.³¹

In order to facilitate development that aligns with international human rights standards within the field of ESC rights, a clarification of the scope and content of

the rights is necessary. The ability of the state to facilitate, promote and provide ESC rights, as well as the ability of citizens to claim them, would benefit from a clearer understanding of the rights. The AAAQ frameworks can thus be seen as an entry point for working with ESC rights in HRBA development processes.

“All human beings are born free and equal in dignity and rights”³²

1.7 UNIVERSALITY

Human rights are universal rights, meaning they apply equally to all human beings without discrimination of any kind. Furthermore, because they are inherent to each individual human being, they are inalienable and cannot freely be given up by anyone, or be taken away by others.

Connected to the principle of universality are the principles of **indivisibility, inter-dependence and inter-relatedness**. Since all human rights are inherent to the dignity of each individual, the first principle means that regardless of the nature of a certain human right, all human rights have equal status and cannot be ranked in hierarchical order. The latter two principles underline the fact that each right may in part or fully be dependent on the realization of other rights.³³

In HRBA there is an emphasis on focusing on the most vulnerable groups and on preventing discrimination.³⁴ Therefore, some of the attributes of the various rights are often described through a focus on, inter alia, women’s health, access to services for people with disabilities, minorities or indigenous peoples.³⁵ The AAAQ-project, however, takes its point of departure in the intrinsic generic universality of all human rights, and thus assumes the position that the standards presented here are applicable to all populations. This does not negate the existence of special needs or special situations for various groups of people. On the contrary, since contextualisation is needed in any case, this approach stipulates that making tangible the generic values and standards is a precondition to applying them in specific contexts and to specific groups. It also reflects the deductive reasoning of the analysis in the AAAQ-project as a whole, the movement from the general to the specific. Therefore, the starting point here is the concept of **adequacy**.

1.8 ADEQUACY AND AAAQ

Adequacy refers to the full realization of Art 11 of ICESCR, e.g. “[...] the right of everyone to an **adequate** standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions [...]”. The term is specified in the General Comments relating to the derived rights, and includes, but is not limited to, the AAAQ criteria of fulfilment. Even though adequacy is not part of the ICESCR Articles 12 and 13, specifying “[...] the right of everyone to the enjoyment of the highest attainable

standard of physical and mental health” and “[...] the right of everyone to education”, respectively, both applies a similar framework in the General Comments no. 13 and 14.

Adequacy, as it is interpreted in the General Comments, is always dependent on specific conditions in specific contexts. However, some standards are relevant at all times, namely the AAAQ criteria of fulfilment. Despite diverging phrasings of adequacy throughout the General Comments,³⁶ all criteria can potentially be categorised and evaluated under the AAAQ framework (see Table 1).

Table 1: The Concept of Adequacy, based on the CESCR General Comments 15, 12, 4, 13, 14

	Water	Food*	Housing*	Education*	Health
Availability	Sufficient quantity Regularity of supply	Sufficient quantity & quality Ability to feed one-self Sustainability Food security	Legal security of tenure Availability of services, materials, facilities & infrastructure	Sufficient quantity Functionality	Public HealthCare (HC) facilities, goods, services Underlying determinants – drinking water & sanitation, facilities, personnel, essential drugs (WHO guidelines)
Accessibility	Physical Economic Non-discrimination Information	Economic – affordability Physical – distance etc.	Economic Physical	Non-discrimination Physical Economic – primary school free of charge	Non-discrimination Physical Economic Information
Acceptability	Colour, odour, taste Culturally acceptable	Culturally acceptable Consumer acceptability	Location – distance to work, services, and social facilities Culturally adequate	Relevant curricula Culturally appropriate	Medical ethics Cultural acceptability Confidentiality Improve health
Quality	WHO Guidelines No health risk Improved source Improved facility	Dietary needs Free from adverse substances	Habitability – space, protection against threats to health WHO guidelines	Quality of teaching, materials, facilities Adaptability Flexibility – adhere to needs of society and students	Scientific and medical standards Good quality – skilled personnel, approved drugs and equipment, safe drinking water & sanitation

* approximated to the AAAQ framework – the criteria are named differently in the General Comments concerning food (GC 12), housing (GC 4) and education (GC 13).

As is evident from table 1, the criteria for adequacy are not identical across the General Comments. Thus, the AAAQ framework is not to be interpreted in a stringent way, but rather as an analytical framework, in which the different concepts of adequacy can be structured. The main idea behind framing ESC rights in this general way is to establish a common frame of reference and to keep the approach relatively simple (and thus broadening the scope of the potential audience). The specific meanings and contents of each right are still to be unfolded individually. However, common features do appear from structuring adequacy in this way:

Availability identifies whether there is a sufficient amount of water available within a given geographical area (e.g. a country, a district or a village) and whether there is a regular supply of water over time. Thereby the availability criterion takes into account seasonal changes in water supply according to weather patterns as well as the regularity of supply on a daily basis. Availability is viewed from a supply perspective in terms of ensuring enough water is available at any given time in a specific location. It is an objective criterion, which can be measured through quantitative data (e.g. amounts of water and duration of water cuts) and it represents a low level of complexity.

Accessibility concerns the level of access and identifies who has access and thereby encompasses the human rights principles of non-discrimination, participation and accountability. There might be an abundance of water within a country or a district, but there are a variety of factors that influence rights holders' ability to access water. Accessibility is divided into four sub-criteria to help identify the barriers for accessing water.

- **Physical accessibility** means that water must be within physical reach and that it can be accessed without physical threats.
- **Economic accessibility** is often referred to as Affordability and concerns the cost of accessing water and attention is given to whether the cost of water threatens the realization of other rights; e.g. if a family is forced to prioritise between water for the family and school fees for the children.
- **Non-discrimination** is a specific element of accessibility as well as an overarching human rights principle for all AAAQ criteria. In its simplest form, the non-discrimination criterion can be addressed through disaggregating data on the other AAAQ indicators based on prohibited grounds of discrimination. An in-depth analysis of marginalised groups and equal access to water requires a range of measurements based on the types of discriminatory practises (e.g. refusing migrant workers access to a borehole) for each of the marginalised and vulnerable groups in the country (e.g. women, people living with HIV/AIDS or disabilities or elderly persons).

- **Information accessibility** concerns the accessibility of information on water related issues and should consider e.g. the frequency, medium, form and language of the information. In a broader perspective, information accessibility also relates to the openness and responsiveness of public institutions to the requests and needs for information about water governance institutions and processes. This includes provision of information about how and when rights holders can participate in policy and decision-making processes as well as establishment of mechanisms for feedback and complaints.

In summary, the accessibility criterion is highly complex and a comprehensive analysis of accessibility should ideally include a high level of user participation to identify relevant indicators for each of the sub-categories as well as a combination of qualitative and quantitative data.

Acceptability concerns subjective assessments of the rights holders' perceptions about water and the delivery of water. A distinction is made between consumer and cultural acceptability. **Consumer acceptability** includes the characteristics of the water (e.g. odour, taste and colour) as well as procedural considerations (e.g. the behaviour of water suppliers). **Cultural acceptability** refers to subjective perceptions based on the culture of individuals, minority groups and communities. For instance, some groups might find it inappropriate to drink water from a tap rather than from a river, while others might refuse to drink water that has been chemically treated or drink water from a borehole close to a graveyard. The high degree of subjectivity makes it very difficult to identify relevant generic indicators at international and national level and a comprehensive assessment of the acceptability criterion should ideally be carried out through a dialogue-based qualitative assessment at local level. Attention should be given to identification and engagement with marginalised and minority groups in local communities.

Quality concerns the quality of water in objective, scientific terms and it is closely tied to international quality standards. Assessing the quality of water is highly complex and requires technical expertise on micro-organisms and chemicals that might pose a health risk. WHO and UNICEF are leaders in the field of water quality and have defined a set of core parameters for water quality (microbial quality, physical parameters and chemical parameters). When measuring water quality, efforts should be made to either make use of quality assessments from WHO and UNICEF or engage technical expertise on water quality.

CHAPTER 2

2. AAAQ FRAMEWORK METHODOLOGY

2.1 INTRODUCTION

The development of the AAAQ frameworks relies on a review and mapping methodology in order to operationalise the selected ESC rights. Since it is the intention that the AAAQ frameworks be used for a variety of purposes, including national standard setting, legitimacy of the frameworks is crucial. Thus, it is important to articulate clearly the distinction between legally binding demands, which countries accept by ratifying the human rights instruments and what are practical operationalisations of human rights standards informed by secondary sources. Essentially, the validity of the frameworks relies on exposing them and their underlying analysis to the scrutiny of stakeholders and their acceptance of the approach. In the following, the AAAQ framework methodology is presented, followed by the key mapping tool.

2.2 MAPPING METHODOLOGY

The methodology relies on a line of deduction starting in the Covenant, through the General Comments and Special Procedures to the specialised UN agencies, major governmental organisations and NGOs, and academia. This allows us to specify a standard on which there is general agreement or, as a minimum, some degree of convergence of opinion and practice. A source mapping template has been developed to facilitate this approach. It operates with a distinction between authoritative and secondary sources. The first consists of sources from the legal international human rights framework, the latter of sources outside, but with some other forms of authority in relation to human rights (i.e. practical, academic). Furthermore, two columns have been added to summarise, wherever possible, convergence on a single generic indicator and a generic benchmark. Deducing from left to right allows us to determine the AAAQ criteria in specific, however generic, terms (see table 2).

Table 2: The AAAQ Framework

AAAQ criteria	Authoritative sources	Secondary sources	Generic indicator	Generic benchmark
Availability	ICESCR (or other treaties) General Comments Special Procedures Constitutional law	Specialised UN agencies (i.e. WHO) Major organisations, donors & NGOs Academia	Deducted indicator based on authoritative and secondary sources	Convergence or consensus on minimum and recommended benchmarks
Accessibility				
Acceptability				
Quality				

Direction of deduction and workflow 

2.2.1 AUTHORITATIVE SOURCES

In this context, primary sources are authoritative in nature, meaning they have to carry at least some legal weight. All relevant information that helps identify standards, indicators and benchmarks is listed in the column in a hierarchy reflecting the level of authority. Authoritative sources, in most cases, primarily provide guidance on standards and identification of indicators, and do not include specific benchmarks.

Though the General Comments adopted by the CESCR are not strictly legally binding, they carry both legal and normative weight, since the Committee is the highest body charged with oversight of the implementation of ICESCR. Special procedures, such as Special Rapporteurs, do not carry legal weight but often form the basis of the statements of the CESCR, and can therefore be said to carry some authority in their interpretations of rights.³⁷ Strictly speaking, the only legally binding document in relation to ESC rights is the ICESCR (and other international and regional conventions), once it has been signed and ratified by a state.

2.2.2 SECONDARY SOURCES

All relevant information that helps identify standards, indicators and benchmarks is listed in the column 'Secondary sources'. Secondary sources often provide guidance on both identification of indicators, as well as setting specific benchmarks (e.g. the MDGs).

While the authoritative sources provide the normative basis and legal framework for each of the rights, they are, naturally, very general in articulating the rights. Thus, secondary sources are useful in order to further specify the content of the rights, and looking ahead, to identify possible indicators and benchmarks.

In this methodology, secondary sources are documents, manuals, guidelines, recommendations, fact sheets and articles from the specialised UN agencies, donors, NGOs and governmental organisations, and from academia. As described above, the authoritative sources carry both legal weight, even obligations, and moral authority on the interpretation of ESC rights. A secondary source, then, is one that contributes to the understanding, in concrete terms, of the ESC rights and their implementation, but does not do so with legal authority. It can be argued, that some sources categorised as secondary do carry either moral or legal authority. The Millennium Development Goals (MDGs) are one such example.

The MDGs are agreed upon by many states, and states repeat their pledges to reach the goals towards 2015. Specifically, MDG 7 to ensure environmental sustainability has as a target (target 7C) to halve the proportion of the population without sustainable access to safe drinking water and basic sanitation. Though the MDGs are not legally binding, they do underline the importance of the right.

However, none of these secondary sources could potentially contribute to the jurisprudence of the rights. They do, however, carry other forms of authority, be that technical, academic, practical, political or moral.

In mapping out the secondary sources, the first step is to identify references to external sources in the authoritative sources. It can be argued that reference from an authoritative source provides the secondary source with some degree of authoritative sanction. The second step is to follow the links to external resources from the website of the OHCHR and that of the CESCR. Both websites have numerous links to UN-driven resources, both from a general ESC rights and a thematic rights-area perspective. Again, the source of the reference can be argued to lend some of its moral authority to these secondary sources. The third step is to do keyword searches across online academic journals. The fourth step is to 'follow the sources of the sources', that is the specific references made in the publications identified in the first three steps.

Following this method produces a massive body of literature, requiring screening to allow effective analysis. Therefore, a number of criteria of justification have been applied to select the sources used. These are: 1) Relevance – is the text relevant for the rights-area you are working with and does it add something new to the understanding of it?; 2) Authoritative sanctioning – has the source been

referenced or cited by an authoritative source?; 3) Tangibility – does the source add to the tangibility and operationalisation of the right in question?; 4) Credibility – is it a credible source, i.e. is the message corroborated by other sources, is the publisher credible, is the author qualified?

2.3 GENERIC INDICATORS

The generic indicator describes what we want to measure in generic form (e.g. litres of water per person per day or student/teacher ratio). The authoritative and secondary sources represent a great variety of indicators. Therefore the definition of the indicator is based on an evaluation of the various interpretations from different sources with a view to accommodate the identified generic benchmarks. When indicators are not directly deductible from the sources, a narrative description is added to explain the rationale for why the indicator has been chosen.

2.4 GENERIC BENCHMARKS

A benchmark can be defined as a milestone or yardstick en route to a target. In the context of AAAQ frameworks, the target is the full realization of all the right. From an operational or programmatic view, target setting is a very important exercise but defining precisely the meaning of full realization requires a high degree of contextualisation³⁸, which is why it is not possible to set appropriate generic and universal targets. However, it is possible to address each of the AAAQ criteria individually, setting benchmarks for progress towards realization.

The benchmarks attach a specific value to the indicator. Here, we will attempt to attach two values: a minimum value, which is the *absolute minimum* for enjoyment of the right and a *recommended value*, as the next step towards full realization. The reasons for setting multiple benchmarks is to attempt to define a lower threshold for when realization levels are critical, while accommodating the progressive realization of rights. The distinction between minimum and recommended may be a simpler exercise when it comes to rights that are essential to life, such as water, food, housing and health; where there are critical levels of health concerns at the lower thresholds, and less so with the right to education. For example, within the right to water, 20 litres per person per day is the minimum standard and 50 litres is the recommended level. The minimum standard here indicates the threshold where people can be said to have basic access, but still with major health and hygiene concerns as a result. The recommended level implies that the major health concerns are lifted at 50 litres, but even at this level the right is not fully enjoyed – that is defined at 100-150 litres, where all health requirements are met.

CHAPTER 3

3. THE AAAQ FRAMEWORK – THE RIGHT TO WATER

In the following, the AAAQ framework for water will be unfolded. Based on the methodology outlined above, this chapter is organised according to the columns of the deduction schematic. First, the authoritative sources on the right to water are listed and the human rights principles and standards on the right to water are presented. Secondly, the secondary sources are listed, and the generic indicators and generic benchmarks developed.

3.1 HUMAN RIGHTS STANDARDS: THE RIGHT TO WATER

The human right to water is derived from ICESCR, Art. 11, the right to an adequate standard of living and Art. 12, the right to the highest attainable standard of health, as well as derived from the right to life and dignity.

Moreover, the right to water is explicitly referenced in the following international and regional human rights treaties:

- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 14 (2) (h)
- The Convention on the Rights of the Child (CRC), Article 24
- The Convention on the Rights of Persons with Disabilities (CRPD), Article 28
- The ILO Convention No. 161 of 1985 on Occupational Health Services, Article 5 (b)
- The African Charter on the Rights and Welfare of the Child, Article 14 (2) (c)
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 15 (a)

Furthermore, the Human Rights Council and the General Assembly have confirmed the right to water (and sanitation) as a human right in resolutions A-HRC-RES-15-9 and A-RES-64-292 (see table 3).

The right to water has been interpreted by the CESCR in its General Comment No. 15. The General Comment states that the right to water specifically concerns water for personal and household drinking and hygiene, which is to take preference compared to water for agriculture and industry.³⁹ Furthermore, General Comment No. 15 specifies the normative content of the right to water

along with its interpretation of the core obligations for state parties in this context specifying certain minimum levels.

Table 4 presents an interpretation of the right to water through the AAAQ framework with reference to General Comment no 15. In the General Comment, the access to information criterion is not addressed under core obligations. However, the General Comment does link access to information with the right to participate in the formulation and review of a national water policy, both in terms of core obligations and as recommendations for implementation at the national level.⁴⁰

Table 3: Authoritative sources: The right to water

International human rights treaties entailing specific obligations related to access to safe drinking water:
<ul style="list-style-type: none"> • The International Covenant on Economic, Social and Cultural Rights (1966) (Arts. 11 and 12) • The Convention on the Elimination of All Forms of Discrimination against Women, adopted in 1979 (Art. 14 (2)) • International Labour Organization (ILO) Convention No. 161 concerning Occupational Health Services, adopted in 1985 (Art. 5) • The Convention on the Rights of the Child, adopted in 1989 (Arts. 24 and 27 (3)) • The Convention on the Rights of Persons with Disabilities, adopted in 2006 (Art. 28)
Regional treaties relating to the right to water:
<ul style="list-style-type: none"> • The African Charter on the Rights and Welfare of the Child (1990) • The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) • The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988) • The Arab Charter on Human Rights (2004) • European Charter on Water Resources (2001) • African Charter of Human and People's Rights (1981) • American Convention on Human Rights (1969) • European Social Charter (1961) • Revised European Social Charter (1996) • European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)
UN Resolutions confirming the right to water and sanitation as a human right:
<ul style="list-style-type: none"> • General Assembly (2010) Resolution A-RES-64-292 The Human Right to Water and Sanitation • HRC Resolution 15-9 (2010) Human rights and access to safe drinking water and sanitation

UN documents further specifying the Right to Water and Sanitation (General Comments, Special Rapporteurs):

- CESCR (2002) General Comment no. 15 The right to water
- HRC (2007) Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments
- HRC (2010) Report of the independent expert on the issue of human rights obligations related to safe drinking water and sanitation, Catarina de Albuquerque
- HRC (2010) Report of the independent expert, Catarina de Albuquerque, progress report on the compilation of good practices
- Report of the Special Rapporteur (2005) Draft guidelines for realization of the right to drinking water and sanitation, El Hadji Guissé
- Special Rapporteur (2004) Relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water, El Hadji Guissé
- Special Rapporteur (2011) Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque

Fact sheets

- Fact sheet no. 35, (2010) The Right to Water, GE.10-14425 – August 2010 – 14,465

Table 4: AAAQ water standards - Core obligations and Adequacy

The right to water, AAAQ applied standards	
Criteria	
Core obligations (Appropriated to AAAQ from GC No. 15, § 37)	Adequacy <i>(While the adequacy of water required for the right to water may vary according to different conditions, the following factors apply in all circumstances)</i> (from GC No. 15, § 10-12)
Availability	Minimum essential level to prevent disease Regularity of available water Water supply sufficient and continuous for personal and domestic use ⁴¹ Quantity should correspond to WHO-guidelines
Accessibility	<u>Physical accessibility:</u> Reasonable distance Reasonable number of outlets/waiting time Security Equitable distribution of water facilities <u>Economic accessibility:</u> Low cost programs targeting vulnerable & marginalised groups <u>Non-discrimination:</u> Ensure non-discrimination of especially vulnerable and marginalised groups <u>Information accessibility:</u> n/a <u>Physical accessibility:</u> Within safe physical reach for all Access in or in immediate vicinity of each household, educational institution and workplace Physical security should not be threatened during access <u>Economic accessibility:</u> Water, and water facilities and services must be affordable for all Direct and indirect costs must not threaten the realization of other covenant rights <u>Non-discrimination:</u> Accessible to all, including the most vulnerable or marginalised, in law and in fact <u>Information accessibility:</u> Right to seek, receive and impart information concerning water issues. Right to participate in the formulation and review of a national water policy
Acceptability	n/a All water facilities and services must be culturally appropriate and sensitive to gender, life-cycle and privacy requirements Water should be of an acceptable colour, odour and taste
Quality	Safe water / prevent disease Prevent, treat and control water related diseases Water for personal and domestic uses must be safe: free from threats to personal health (micro-organisms, chemical substances and radiological hazards). (WHO guidelines should be applied as basis for national standards) All water facilities and services must be of sufficient quality

3.2 GENERIC INDICATORS: THE RIGHT TO WATER

Generic indicators derive from standards for water. These derive from authoritative sources, as analysed above, and secondary sources, listed in table 5. While the standards do provide a core obligation that ‘minimum essential levels’ are fulfilled, the standards do not specify exact values. What is specified through the standards, are the defining attributes of the rights.

Table 5: Secondary sources: The right to water

Specialised UN agencies	
WHO	<ul style="list-style-type: none"> • WHO Guidelines for Drinking-Water Quality (2008) • WHO UNICEF Progress on Drinking Water and Sanitation 2012 update (2012) • WHO UNICEF Core Questions on Drinking-Water and Sanitation for Household Surveys (2006)
UNDP	<ul style="list-style-type: none"> • UNDP Human Development Report 2006 - Beyond Scarcity - Power, poverty and the global water crisis (2006)
MDG	<ul style="list-style-type: none"> • The Millennium Development Goals (MDGs), cf. MDG-7 (2000) • The Millennium Project. Health, Dignity, and Development-What Will it Take. Task Force on Water and Sanitation (2005)
Development NGOs or Government organisations	
GTZ	<ul style="list-style-type: none"> • The Human Right to Water and Sanitation - Translating Theory into Practice (2009)
Various organisations	<ul style="list-style-type: none"> • Brot für die Welt, COHRE, Heinrich Boell Stiftung (2005) <i>Monitoring Implementation of the Right to Water - A Framework for developing indicators</i>, Global Issue Paper No. 14 (2005) • COHRE, AAAS, SDC and UN-HABITAT (2007) <i>Manual on the Right to Water and Sanitation</i>
COHRE	<ul style="list-style-type: none"> • COHRE Possible indicators for the right to water
Academia	
	<ul style="list-style-type: none"> • Gleick, PH (1998) <i>The human right to water</i>, Water Policy 1(1998) • Gleick, PH (1996) <i>Basic Water Requirements for Human Activities</i>, Water Policy • Howard, G & Bartram, J (2005) <i>Effective water supply surveillance in urban areas of developing countries</i>, Journal of Water and Health, 03.1, 2005 • Howard, G & Bartram, J (2003) <i>Domestic Water Quantity, Service, Level and Health</i>

	Criteria	Human Rights Standard (Adequacy)	Generic Indicator
Table 6: AAAQ water – Standards and Generic Indicators	Availability	Sufficient water	Quantity of water used per person per day
		Regularity of water	Number of disconnections Period of unavailability of water Incidents of unavailability of water over time
	Physical accessibility	Reasonable distance / number of outlets / waiting time	Total collection time, including waiting time
		Security	% of rights holders report that they have not experienced threats/assaults
		Equitable distribution	Number of people per water outlet
	Economic accessibility	Affordability	Total (direct + indirect) costs as proportion of income and as proportion of total cost of fulfilling basic needs/right
	Non-discrimination	Non-discrimination	% of rights holders report they have not been subjected to discrimination % of individuals belonging to vulnerable groups report they have not been subjected to discrimination % of other AAAQ indicators where no discrimination is detected
		Access to information	Information access
	Acceptability	Consumer acceptability: odour, colour, taste	% of rights holders who are satisfied with odour, colour and taste Number of complaints about odour, colour and taste
		Cultural acceptability: gender, life-cycle, privacy	Adaptions to cultural, gender, life-cycle and privacy considerations
Quality	Safe water / sufficient quality	% of water is compliant with WHO quality standards	
		% of rights holders use improved water sources	
	Prevent, treat, control water-related disease	Prevalence of waterborne disease	

3.2.1 AVAILABILITY

The availability criterion for water states that water supply should be continuous and sufficient in quantity. This allows for availability to be measured by two indicators. While saying nothing about how much is sufficient, sufficiency can be measured as **quantity of water used per person per day**. Measuring the regularity of water supply is more complex. An indicator could be the **number of disconnections over a period of time**. However, to cover, e.g. pipeline cuts or seasonal changes, disconnections should be understood as **incidents of unavailability of water**.

3.2.2 ACCESSIBILITY

The **physical accessibility** criteria of access within safe physical reach has two components: (1) access in or in immediate vicinity of household, educational institution or workplace; (2) physical security during access. The first concerns the distance of access. This can be measured in metres or other units. However, as people may use different methods of transportation, distance units do not encompass the whole picture. Adding to the picture are also the core obligations of an acceptable number of water outlets and waiting time, as well as an equitable distribution of water facilities. Thus, an indicator that could potentially encompass all these issues is **total collection time, including waiting time**. If disaggregated based on geographical location, one should be able to identify areas in need of more water outlets and facilities.

Physical security is a key protective aspect of accessibility. A part of security and safe access relates to the access of people with disabilities or other conditions restricting their ability to physically access water, however, this will be treated under the non-discrimination criteria. Physical security, then, could be expressed in the **number of (reports of) assaults during access to water**. This may not be a good indicator, however, as assaults may not be recorded or even reported, and if they do, they may not be catalogued as ‘during access to water’. An indicator on this particular aspect must be tailored to the specific context of use, e.g. through operationalising local knowledge of security during access to water.

Economic accessibility has two main points, namely, that water and water facilities must be affordable to all and that the total costs (direct + indirect costs) associated with water must not threaten the realization of other rights or basic needs. Looking at an individual (person/household), a potentially overarching indicator is the **total costs/spending (direct + indirect costs/spending) as a proportion of individual/household income (or as a proportion of total costs of fulfilling basic needs/rights)**.

For the **non-discrimination** criteria, the standard approach is to **have all indicators be disaggregated on the prohibited grounds of discrimination**.

However, such indicators may not always be available and may be difficult to obtain or collect. In such cases, where lack of resources limit the extent to which disaggregated indicators can be obtained/collected, another approach is to first identify the population groups likely to be discriminated through analysis of the context, and to **focus on the most marginalised and vulnerable groups**.

Information accessibility encompasses the right of people to participate in decision-making processes concerning water issues affecting their exercise of the right to water, as well as full access to information regarding water issues. Indicators of information access should thus include participation, such as public hearings.

3.2.3 ACCEPTABILITY

Acceptability covers two aspects: consumer acceptability and cultural acceptability. Acceptability concerns peoples' subjective perspectives on water. For instance, some users may reject industrially cleaned water for religious reasons despite the fact the water meets all objective quality standards. Acceptability can also concern perceptions among users of provider service level.

Measuring these perceptions may be difficult and require resources, but a HRBA provides that rights-holders be fully respected. Level of acceptability may also relate to health concerns. For example, if *safe* water is not acceptable to consumers, they may be inclined to consume water from unsafe sources. The straight-forward path would ask the end user to rate the water on these three accounts.

Another more pragmatic approach is to look at **the number of complaints about the colour, odour or taste of water**; though this type of data may not be available either. The second aspect of acceptability concerns cultural appropriateness and gender, life-cycle and privacy requirements. Again, from a generic statistical point of view, it is difficult to determine cultural appropriateness by categorisation. Evidently, there is a need to contextualise this criteria, as there are many different cultural practices with regards to water. Practices may impose specific demands upon the physical construction of water and sanitary facilities, e.g. gender separated facilities. **Thus, a generic indicator on this account may not be appropriate.**

3.2.4 QUALITY

The **Quality** criterion has three components: Water must be safe; the state must prevent, control and treat water related diseases; and water facilities and services must be of sufficient quality. The three components are highly interrelated. An indicator of safe water and of the quality of water facilities and services often emphasised is the distinction of **improved / unimproved water**

source. This is an MDG indicator, but attention is drawn to it throughout human rights literature. However, even though it is relatively simple to obtain data on improved / unimproved water source, this does not measure the actual quality of the water.⁴² Furthermore, in the General Comment No. 15 the **use of the WHO guidelines** regarding water service delivery is highly recommended as the basis for national water standards, thus providing an indicator for safe water at the policy level. Another indicator of prevention, treatment and control is **the prevalence of waterborne diseases.** One should take note that official statistics in this regard are not necessarily exhaustive, and that many incidents of waterborne disease are not reported or recorded. In the context of water quality, it is important to remember that determining the exact quality of water is a complex and potentially resource-hogging task. The discussed indicators on water quality are therefore based on a more pragmatic approach, allowing smaller organisations to make assessments on this parameter as well.

3.3 GENERIC BENCHMARKS: THE RIGHT TO WATER

3.3.1 AVAILABILITY

Water should be available in sufficient quantity for personal and domestic uses. While there is no specific quantity set in the GC No. 15, it is advised to look at WHO-guidelines and research. The WHO defines four thresholds for water availability per person per day: below 5 litres produces very high health concerns, as water for consumption cannot be assured and hygiene is impossible; 5-20 litres produces high health concerns, because while consumption should be assured and hand-washing and basic food hygiene should be possible, bathing and laundry is difficult; at avg. 50 litres, health concerns are low, as consumption and hygiene needs should be assured; at avg. 100 litres, health concerns are very low as all consumption and hygiene needs should be met.⁴³

3.3.2 ACCESSIBILITY

Physical accessibility to water is closely linked with availability in that the longer the distance to a water source, less water is likely to be collected. The four thresholds correspond to four categories of access, that is, no access, basic access, intermediate access and optimal access:

Table 7: Categories of access: The right to water

Service level ⁴⁴	No access	Basic access	Intermediate access	Optimal access
Distance to source	More than 1000 metres	100-1000 metres	On plot or 5-100 metres	Multiple taps in house
Total collection time per roundtrip	More than 30 minutes	5-30 minutes	5 minutes	None
Quantity likely to be collected	Up to 5 litres	Up to 20 litres	Up to avg. of 50 litres	Avg. 100 litres and above

From a health perspective, it is alluring to set a benchmark of at least intermediate access with avg. 50 litres of consumption. However, this is probably not attainable for all countries, and thus would not be in line with the principle of progressive realization. Therefore, an intermediate benchmark could be set at basic access and a recommended benchmark at intermediate access. Furthermore, physical accessibility includes access to water from school/workplace as well as households. Physical security should not be threatened.⁴⁵

The triangulation of indicators between the benchmarks on quantity, distance and collection time will increase the validity of a survey that includes all of them. Using only one could skew the findings – having more than a 1000 metres to the nearest source could be mitigated by, e.g. having a car to transport the water in. In that situation, the round-trip may be a lot less and the quantity greater than suggested by the table above.

Economic accessibility is defined as the direct and indirect cost of water and water facilities being affordable to all, without compromising the enjoyment of other rights. In other words, the cost of water must not remove the households' financial ability to buy food and pay rent. GTZ sets the benchmark for water and sanitation at <5 % of a household's income.⁴⁶

Regarding **Non-discrimination**, the state is obligated to secure that the right to water is enjoyed without discrimination, especially with regard to the most vulnerable or marginalised groups. Clearly, it is not appropriate to set a generic benchmark in the non-discrimination category because it is highly dependent on the specific context. Of course, the full realization target would be the non-existence of any kind of discrimination in law and fact. Benchmarks here would

be process oriented towards what is being done to eradicate discrimination in terms of law, policy, awareness raising and campaigning.

Information accessibility means that all should be able to seek, receive and impart information relating to water issues. The definition provided by CESCER may indicate some overlap with the right of people and groups to participate in decision-making processes that affect their exercise of the right to water.⁴⁷

3.3.3 ACCEPTABILITY

Acceptability is not a self-contained feature in GC No. 15. Nevertheless, it is stated that water services and facilities must be culturally appropriate and sensitive to gender, life-cycle and privacy requirements. For consumer acceptability, it states that the water must be of an acceptable colour, odour and taste for each personal or domestic use. The acceptability criterion is thus both subjective and culturally dependent, and therefore it is possible to identify an appropriate generic indicator or benchmark here. It must be done through a process of contextualisation, by involving national and local actors in the definition of benchmarks.

3.3.4 QUALITY

Regarding the **Quality** of water, GC No. 15 states that “[water] must be safe, therefore free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person’s health”.⁴⁸ Furthermore, use of the WHO guidelines for drinking-water quality is advised, as a basis for developing a national strategy to ensure safe water.

For a more pragmatic and less resource-hogging approach, the MDG distinction in improved vs. unimproved sources, flawed as it may be, can provide an entry point to a benchmark in relation to quality. The 2015 benchmark of 89 % of the population serves as an immediate benchmark, while the objective must be 100 %.⁴⁹ Even though the benchmark was reached in 2010 on the aggregate global scale, problems persist, especially in rural, sub-Saharan Africa.⁵⁰

Table 8 on the following page shows the generic benchmarks in relation to the generic indicators. Contextualisation of benchmarks is key in many cases and the list of generic indicators cannot be conclusively developed. Contextualisation is necessary in all circumstances for the framework to be applicable nationally and locally, and should in principle be done in a participatory process, including all relevant stakeholders.

Table 8: Generic Indicators and Generic Benchmarks: The right to water

The right to water: Generic Indicators and Generic Benchmarks		
Criteria and Standard	Generic indicator	Generic Benchmark
Availability Sufficient water	Quantity of water used per person per day	Intermediate: 20 Litres of water used per person per day Recommended: 50 Litres per person per day
Continuous supply	Number of disconnections / Incidents of unavailability of water over time	--
Accessibility Physical	Total collection time, including waiting time	Intermediate: Max 30 minutes collection time, incl. waiting time Recommended: Max 5 minutes collection time, incl. waiting time
	Number of reports of threats / assaults	--
	Number of people/households per water outlet by geographical location	--
Economic	Total (direct + indirect) costs as a proportion of income (and as proportion of total cost of fulfilling basic needs/rights)	Total household water costs amount to max 5 % of total household income
Non-discrimination	Disaggregation of indicators of access on prohibited grounds of discrimination	--
Information	--	--
Acceptability Consumer	Number of complaints about colour, odour, taste	--
Cultural	--	--
Quality Safe water / water quality	Are WHO-guidelines applied?	80 %
	Improved vs. unimproved water source as primary water source?	Intermediate: MDG benchmark – 89 % Recommended: 100 % use improved water source
Prevent, treat and control waterborne diseases	--	--
	Prevalence of waterborne diseases	

LITERATURE

LITERATURE

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END NOTES

END NOTES

INTRODUCTION

¹ OHCHR (2006)

² Filmer-Wilson, E (2005: 239)

³ The AAAQ criteria stem from the General Comments 14 and 15 on the rights to health and water. The rights to food, housing and education are not specifically defined through an AAAQ framework; This project stipulates that it may be useful to apply this framework on these rights as well (see the section on adequacy and AAAQ).

⁴ UN Doc, E/C.12/2002/11 (2003),

http://www2.ohchr.org/english/issues/water/docs/CESCR_GC_15.pdf

⁵ UN Doc, E/C.12/2002/11 (2003: paras. 2 and 7-9)

1. CORE CONCEPTS & PRINCIPLES

⁶ ICESCR (1966: Arts. 6-15)

⁷ A/RES/64/292 (2010)

⁸ See the section on universality further below

⁹ <http://www.ohchr.org/EN/Issues/ESCR/Pages/RegionalHRTreaties.aspx> The cited list is not to be considered conclusive.

¹⁰ OHCHR (2012: 14)

¹¹ OHCHR (2008: 107ff)

¹² A full list of special procedures and their mandates are available on the OHCHR webpage: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>

¹³ OHCHR (2008: 3-4)

¹⁴ In Human Rights literature, these are generally known as “The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights” (1997), which builds on the “The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights”, 1987

¹⁵ OHCHR (2006: 2)

¹⁶ For a more comprehensive deconstruction of core obligations, see Young, KG (2008) *The Minimum Core of Economic and Social Rights: A Concept in Search of Content*, The Yale Journal of International Law, Vol. 33:113, pp. 113-175

¹⁷ ICESCR (1966: Art. 2.1)

¹⁸ CESCR (1990: par. 9)

¹⁹ Ibid, par. 9

²⁰ Ibid, par. 9

²¹ Ibid, par. 10

²² ECOSOC (2007: para. 76f)

²³ Ibid. par. 76-78

²⁴ CESCR (1990: paras. 10-13)

²⁵ The minimum essential levels are described under the core obligations of the state parties in the General Comments, but some aspects are not given a detailed account as to the specific content of these levels. For example, General Comment 15 on the right to water, § 37.a refers to “*the minimum essential amount of water, that is sufficient and safe [...] to prevent disease*”. Thus, one wonders, how much is sufficient to prevent disease, and when is water safe?

²⁶ The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies (2003).

http://www.undg.org/archive_docs/6959-

[The Human Rights Based Approach to Development Cooperation Towards a Common Understanding among UN.pdf](http://www.undg.org/archive_docs/6959-The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf)

Often referred to as the “Stamford Common Understanding”.

²⁷ Boesen, JK & Martin, T (2007: appendix 3, p. 42)

²⁸ Filmer-Wilson, E (2005: 217)

²⁹ Boesen, JK & Martin, T (2007: appendix 3, p. 42)

³⁰ Boesen, JK & Martin, T (2007: appendix 3, p. 42)

³¹ Ibid.

³² Universal Declaration of Human Rights, (Art 1)

³³ The Human Rights Based Approach to Development Cooperation – Towards a Common Understanding Among UN Agencies, (2003: 2)

³⁴ See, inter alia, Filmer-Wilson, E (2005) *The Human Rights Based Approach: The Right to Water*, Netherlands Quarterly of Human Rights, Vol 23/2

³⁵ For example, the OHCHR identifies “sexual and reproductive health”, “child mortality and health care”, “natural and occupational environment”, “prevention, treatment and control of diseases”, and “accessibility to health facilities and essential medicines” as the essential attributes of the right to health. OHCHR (2012) *Human Rights Indicators*, p31f.

³⁶ In 1999, a 4-tier conceptualisation of the contents of ICESCR rights was introduced by the Special Rapporteur on the right to education, Ms. Katarina Tomasevski. She proposed a 4-A scheme for education, denoting the four essential features that primary schools should exhibit, namely *Availability, Accessibility, Acceptability, and Adaptability*. This framework was then applied in General Comment No. 13 on the Right to Education, and has been adopted and adapted in later the GC’s No. 14 and 15 on health and water, changing the Adaptability criteria to one of Quality. While GC’s No. 4 and 12 on Housing and

Food does not apply this scheme, their contents can be structured this way in a generic AAAQ-scheme. See Tomasevski, K (1999) *Preliminary report of the Special Rapporteur on the right to education, Ms. Katarina Tomasevski, submitted in accordance with Commission on Human Rights resolution 1998/33*, p. 18 for the original 4-A conceptualisation.

2. AAAQ FRAMEWORK METHODOLOGY

³⁷ Toebe, B (2011: 17-18); Leckie, S (1989: 525)

³⁸ As noted in the section on Adequacy and AAAQ, the full realization of a right is dependent on context, but the AAAQ criteria are applicable in all circumstances.

³⁹ This distinction is in line with UNDP's 2006 Human Development Report, that made a comparable distinction between water for life in the household on the one hand and water to sustain ecological systems and for livelihoods on the other.

⁴⁰ In General Comment 15 § 12 (c)(iv) concerning access to information, reference is made to § 48 in the same document. § 48 states that participation in processes that *may* affect a persons exercise of the right "*must be an integral part of any policy, programme or strategy concerning water*".

⁴¹ Personal and domestic uses includes drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene

⁴² The distinction has been made from a certain pragmatic point of view: Needing tools to assess the MDGs on the global scale, comparable categories are needed. On this basis it has been asserted that the separation of human fecal matter and drinking water has the greatest impact on quality. While it is true that this has a great impact on health, it offers but circumstantial evidence as to other harmful substances or general water quality.

⁴³ Howard, G and Bartram, J (2003: 22)

⁴⁴ Howard, G and Bartram, J (2003: III)

⁴⁵ UN Doc, E/C.12/2002/11 (2003: art 12)

⁴⁶ GTZ (2009: 4)

⁴⁷ UN Doc, E/C.12/2002/11 (2003: Art. 12 & Art. 48)

⁴⁸ UN Doc, E/C.12/2002/11 (2003: art 12 b)

⁴⁹ WHO & UNICEF (2010: 4)

⁵⁰ *Ibid.*, p. 4-13

A human rights based approach to development has gained a prominent role in the socio-economic development of countries around the world and the agenda for the development and realisation of the Sustainable Development Goals. Meanwhile, the challenge remains of translating the international human rights instruments and normative values into a model for development with a clarified methodology, analytical concepts and policy options. All involved actors need to know and understand what the right to an adequate standard of living means and how this can be achieved.

This Issue Paper explores a possible generic methodology for the operationalisation of rights, exemplified through the right to water. The key aims of this methodology are:

- To identify the core normative dimensions of the right in terms of the criteria of Availability, Accessibility, Acceptability and Quality (AAAQ).
- To develop a framework on the basis of the AAAQ criteria that consists of specific standards, generic indicators and generic benchmarks.

The Issue Paper is part of the AAAQ Toolbox that aims to support the operationalisation of the rights to water, sanitation, food, housing, health, and education by developing their respective AAAQ frameworks. Furthermore, methodologies are being developed to support the contextualisation of standards and indicators for different actors in national, local and operational contexts. Designed as a multi-stakeholder approach, the AAAQ Toolbox includes common methodologies for all stakeholders as well as tailored tools for states, rights-holders, business, civil society and National Human Rights Institutions (NHRIs).